

RES 2013  
Reservation Economic Summit  
Las Vegas, Nevada  
March 11 – March 14, 2013

I am very grateful to have been able to attend the Annual Reservation Economic Summit (RES) hosted by the National Center for American Indian Enterprise Development (NCAIED). The theme this year was "Honoring Our Past, Defining Our Future." As part of that theme, there was time devoted to teaching participants about the Cahokia Mounds. The Mounds are just a portion of the largest archeological site north of Mexico. It was larger than London by 1250 AD. It was a thriving Mississippian community that serves to remind us that being successful business-people is not new to Indian Country. Therefore, there were elements of Cahokia that were woven into the program, general sessions, break-out sessions and in the décor of the convention and marketplace.

I wanted to learn as much as I could about new ways to generate revenue for our Tribe and to also learn about what we should, probably, *not* do. I am determined to find ways to diversify our business efforts and to move us away from relying solely on gaming. So with that in mind, I wanted to see what other tribes are doing and to learn about how our relationship with the Federal government can affect us in terms of our tribal economy, too. Some of the highlights of my information gathering and the activities that I attended:

1 ) General Session – Tuesday, 3/12

After the Posting of Colors by the Native American Female Color Guard, several "welcomes" were given by key NCAIED Staff and Board Members, as well as the Chairman of the Las Vegas Paiute Tribe and Charles Galbraith from the White House Office of Public Engagement. The Corporate Advocate of the Year Award and the Congressional Lifetime Achievement Award were then presented. Following those presentations, there was an excellent Keynote Speaker, Victoria Labalme. She is a Creative Communications Strategist who has an extensive background in assisting businesses and corporate professionals. Her clients include top teams at Microsoft, Starbucks, McDonald's, Oracle, Intel, Verizon, Blue Cross Blue Shield, AAA, American Heart Association, 24 Hour Fitness, New York Life Insurance, John Hancock, Million Dollar Round Table. She has also worked with an array of educational institutions and federal government agencies. She was asked to be the keynote for the first General Session due to her experience with coaching and helping people be better listeners and communicators. Her presentation was excellent. She spoke about how important it is to identify what your "through-line" is and to use that throughout your life to help steer you in the right direction. She also did an exercise to

demonstrate the importance of perspective and seeing things in the way most beneficial to your success.

When Ms. Labalme was done, the Master of Ceremonies, Mr. Gary Davis (President/CEO of NCAIED) thanked her for her presentation and made a very good point. He said that when they were picking the keynote speakers for the General Sessions, he wanted to expose our Native peoples to the same, high-caliber motivational/coaching/training programs and individuals that the business-world and top executives have access to for improving their performance, increasing their productivity and making their businesses more successful.

In closing the Opening General Session, there was a procession to the Trade Show to officially open it up for the duration of the conference. This year, they combined the trade show and marketplace into one huge area. This change was welcomed one as it made it easier to navigate through all of the tables, gave it more of a centralized, community feel and allowed the artisans who had items to sell better access to conference attendees and the corporate vendors.

#### Tribal Business Leaders Forum –

This was a two-part session that included U.S. Congressmen, Tribal Enterprises and Alaska Native Corporations. I attended both parts of this forum. It was in a panel format and was well-facilitated by Moderator, David Hinson, National Director of the Minority Business Development Agency. They highlighted different, successful tribal businesses. Most of these businesses were from Alaska Corporations. One of the topics that came up was trying to encourage Native businesses to partner with other Native businesses on a more regular basis.

#### 1 ) General Session – Wednesday, 3/13

After a prayer was said by John Red Eagle, Principal Chief of the Osage Nation, Tracey LeBeau (Director of the U.S. Department of Energy Office of Indian Energy Policy and Programs) addressed the crowd with an update. Also during this General Session, there were more awards that were given out: the American Indian Business Owner of the Year Award went to Dan Bonamie from the Ongweoweh Corporation, the Tribal Gaming Visionary Award and Small Business Empowerment Award was presented to Michell Hicks, Principal Chief of the Eastern Band of Cherokee Indians, the Tim Wapato Public Advocate of the Year Award went to Pete Horner from the National Indian Business Association

and the American Indian Leadership Award was given to Chairman Ron Allen of the Jamestown S'Klallam Tribe. The keynote speaker was a Mr. Steven Wiley. He was another excellent motivational speaker and trainer. He is also an entrepreneur and author. Some of the companies he has worked with are Kellogg, Ford, Wells Fargo, Home Depot and Verizon.

I then attended break-out sessions:

*The Through Line and the Art of Listening™ – It's Why Great Leaders Are Great Listeners!* From senior executives at Fortune 100 companies to sales professionals, entrepreneurs and industry leaders, Creative Communications Strategist Victoria Labalme has helped thousands of individuals tap into what makes them distinct to transform their communications and take them into an entirely new realm—one marked by creativity, innovation, heart, humor, authenticity, impact...and lasting results. During this session, Ms. Labalme focused on helping us understand what makes a good listener and what hinders us in being a good listener. She made the point that it's human nature to be most interested in hearing and talking about ourselves. Therefore, she had us go through several exercises with a partner to practice listening. She also provided us with several ways to obtain further training through her company.

**TAXATION— Tribal Tax Revenue Opportunities for Tribes:** Tribes and intertribal organizations have formed the Intertribal Organization Tax Initiative (IOTI) to carry out united tribal action to confront new forms of intrusion into the sovereign affairs of tribes by federal and state taxation policies. Tribal governments have had to defend against expansive Internal Revenue Service (IRS) examinations and audits of tribal government services to members. Tribal governmental and economic development programs have been hindered by the more burdensome federal tax requirements imposed on tribes than on state governments. Meanwhile, states continue to seek mechanisms to obtain state revenues from tribal commerce. This break-out session, featuring representatives of the IOTI Tax Initiative, will report on key tax policy developments and what to expect in the coming year, including pending IRS guidelines on the General Welfare exclusion and tribal proposals for tax reform legislation as well as other tax policy efforts that have been undertaken to defend tribal sovereignty, strengthen nation-building and stimulate economic development. I was most interested in attending this session at this conference. I believe that we need to look at getting involved in the IOTI and help protect our own citizens from unnecessary taxation from the federal government in regards to activities that would fall under the normal General Welfare Exclusion. I collected a lot of information and would like to bring one

of the attorneys that spoke on the panel to visit us at LTBB. Please see attached PowerPoint from one of the panelists.

**GOVERNMENT PROGRAMS AND LEGISLATIVE UPDATES – What, When, Why, Who and Where:** This panel provides legislative information affecting economic and communities' development in Indian Country. It includes discussion on The Affordable Care Act (ACA) Outreach and communications with consumers, businesses and what you need to know about its implementation; The HEARTH Act and the new tribal leasing regulations and policies effecting housing and outside business investment; information on federal government initiatives that the Department of Health and Human Services Intradepartmental Council on Native American Affairs, are addressing, such as access to grants, access to data, self-governance expansion and tribal and state relationships.

**Moderator:** Patricia Parker – President & CEO, Native American Management Services, Inc. and Member Board of Directors, National Center for American Indian Enterprise Development. The panel was supposed to be Stacey Ecoffey – Principal Advisor for Tribal Affairs, U.S. Department of Health and Human Services, Lillian Sparks – Commissioner, U.S. Administration of Native Americans and Jacqueline Johnson Pata – Executive Director, National Congress of American Indians. However, there were panelists that were unable to make it at the last minute. Therefore, Jacqueline Johnson Pata from NCAI was the one who gave the updates on the topics outlined in the session description. She also directed us to the NCAI website for more information and reminded us to look for updates on a regular basis at the NCAI website and through the email exchange.

**8(a) CONTRACTING – The 8(a) Forecast: What Does The Future Hold for 8 (a) Native American Businesses, Alaska Native Corporations and Tribal Nations:** Key U.S. Small Business Administration officials will be on hand to provide their insights about the 8(a) opportunity forecast. The panel will help clarify recent rulings and legislation that affect 8(a) contracting and provide audiences with general information about the Small Business Administration 8(a) Business Development Program. The **Moderator:** Clyde Gooden - Vice President, Business Development, NANA Corporation and Member Board of Directors, National Center for American Indian Enterprise Development. **Panelists:** Darryl K. Hairston – Associate Administrator for Business Development, U.S. Small Business Administration, Kevin Allis – Executive Director, Native American Contractors Association, Robert Pearson – District Counsel/OGC Area 4, U.S. Small Business Administration. I have continued to find ways to educate myself on 8(a) contracting in the hopes that it may be an avenue for our Tribe to expand our economic

activities. The biggest hurdle for tribes in doing government contracting is the process of becoming 8(a) certified. We have people in our tribe that have looked into getting this certification for us, but we have certain criteria that have been a challenge to meet, one of those being the need for prior business experience. Another issue is the capacity to fulfill large-scale contracts. I will continue my research on this topic.

I also attended the Women's Award Luncheon and Fashion Show with Vice Chairperson Julie Shananaquet. The theme of this year's luncheon was "Cause Célèbre" – Violence Against Women Act (VAWA). The luncheon was conducted in honor of Native Women in Business, but also to celebrate the reauthorization of the VAWA with the enhanced tribal provisions. It was sponsored by the Native American Financial Services Association (NAFSA). The fashion show was produced by Ainjil Hunt (Kwakwak'wakw/Tlingit, BC, Canada) and featured an amazing collection from TOC Legends – Designer, Pamela Baker (Hi-mikalas, BC, Canada). There was also a musical performance by singer Tabitha Fair (Chickasaw Nation) who has a very impressive resume and is an amazing role model for our young Native women. The Annual National Native Woman Business Owner of the Year Award was also given out at the luncheon. This year's recipient was Roxie Schescke (Rosebud Sioux), President of Indian Eyes LLC, located in Pasco, Washington.

I am very grateful to have the opportunity to attend events like RES 2013. It helps me learn more about things that I can utilize to help our community. I remain dedicated to finding other ways for our tribe to increase revenue outside of gaming. It is at events like this that we may be able to find those perfect opportunities to do so. Miigwech to my fellow Citizens for allowing me to attend this function.

Respectfully submitted,

Winnay J. Wemigwase

# SNR DENTON

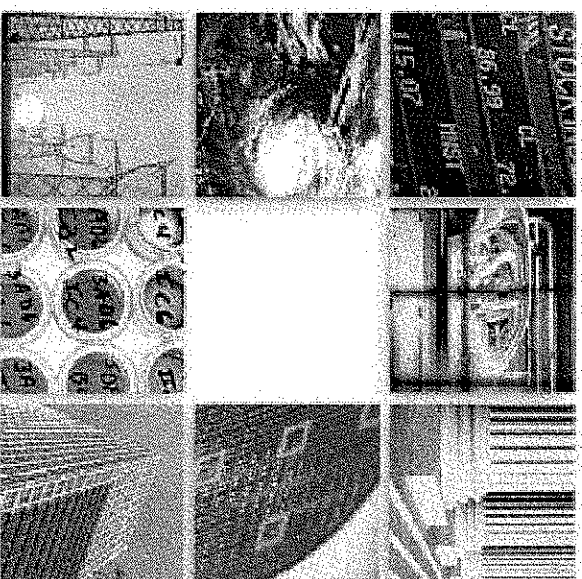
## Why Indian Country Needs Tax Reform Right Now

### RESTORING THE FOUNDATION OF INDIAN TRIBAL TAX IMMUNITY TO RESPECT TRIBAL SOVEREIGNTY AND CREATE JOBS

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# Overview of Indian Country's Tax Issues

- Issue #1. Over the last several decades, the United States government has intensified its effort to assess direct taxes on Indian people and activities occurring on tribal lands
  - The U.S. Internal Revenue Service has granted itself authority to tax income earned by Indians
  - The IRS has also succeeded in gaining control of Indian tribal governments to serve as its tax collectors
  - Neither the U.S. Constitution nor any Indian treaty expressly authorizes the taxation of individual Indians or Indian nations
- Issue #2. The U.S. Supreme Court has authorized state governments to tax certain business activities of Indians and non-Indians in Indian Country
- Issue #3. Indian Country is chronically underdeveloped and U.S. tax policies do not promote investment on tribal lands

## What is the Federal Taxation Threat?

- The U.S. Internal Revenue Service, a branch of the U.S. Treasury Department, has unilaterally determined that Indians are “taxpayers”
  - Indians are now required to pay income tax for income earned anywhere, including on sovereign treaty and trust lands
  - Indians are now routinely audited by the IRS to ensure compliance
- Indian tribal governments, however, are not considered by the IRS to be “taxable entities” and so tribal income is immune from tax
  - Nonetheless, the IRS has commandeered tribal governments to serve as tax collectors of income earned by tribal officials, Indian and non-Indian employees, casino patrons, pow-wow dancers, etc.
  - Tribal governments are increasingly audited by the IRS to ensure compliance
- The IRS has established a “Tax-exempt and Government Entities” unit to facilitate its tax collection efforts in Indian Country
- As a result, Indian Country is being drained of its wealth through taxation



## What is the State Taxation Threat?

- The U.S. Supreme Court has authorized the taxation of business activity engaged in by both Indians and non-Indians in Indian Country:
  - Income earned by non-Indians
  - Property owned by non-Indians
  - Natural resource extraction by non-Indians
  - Tobacco sales by Indians to non-Indians
- State taxation in Indian Country drains wealth from Indian nations that could be utilized to sustain tribal societies
  - It also burdens job creating activities
- In sum, state governments benefit at the expense of tribal governments

## Can IRS Actions Be Reformed?

- The IRS is perhaps the most powerful civilian government agency
- Attributes:
  - Independent
  - Laws prohibit interference from political officials
  - Presumption of guilt
  - Taxpayer protest actions require pre-payment of disputed taxes
- Can be very rigid and self-serving in interpretations of the Internal Revenue Code
  - see IRS Chief Counsel Memorandum on Definition of Medical Care Under §139D, Dec. 5, 2012
- But can be surprisingly responsive in the face of reasoned advocacy
  - See Notice 2012-75, Application of General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members, Dec. 2012

# How Has Congress Acted to Address Tribal Tax Immunity?

- 1982: Congress enacts Indian Tribal Government Tax Status Act that provides certain tax immunity benefits for Indian tribes to be treated like states
- 1983: Congress expressly provides that per capita distributions of trust funds shall not be subject to federal or state income taxes, and that distributions of \$2,000 or less shall not effect eligibility for federal or state benefits. 25 U.S.C. §117a-c
- 1988: Congress expressly authorizes income taxation of per capita distributions of net gaming revenues. 25 U.S.C. § 2710(b)(3)(D)
- 1988: Congress expressly exempts Indian treaty fishing income. 26 U.S.C. § 7873
- 2009: Congress enacts provisions allowing \$2 billion in tax-exempt tribal economic development bonds
- 2009: Congress enacts Section 139D of “ObamaCare” Law that excludes from income “qualified Indian health care benefit”

## What is the Best Path Forward to Restoring Treaty-based Tribal Tax Immunities?

- JUDICIAL REFORM efforts are virtually impossible
  - Existing law presumes legality of income taxation and is very well settled
- EXECUTIVE ACTION is difficult to achieve given IRS autonomy
  - IRS will never reverse the presumption that the income tax applies to Indians
  - But narrowing the application of income taxation is a pending issue, e.g. GWE
- LEGISLATIVE ACTION has produced more results
  - Principled advocacy to obtain Congressional recognition of tribal tax immunity can lead to success
  - The critical factor for success is to anchor the advocacy effort to tribal sovereignty and to treaty-protected lands and activities to create jobs

# What Can Congress Do to Protect Tribal Tax Immunity and Promote Job Creation in Indian Country?

- AMEND THE INTERNAL REVENUE CODE TO PRESERVE EXISTING TRIBAL WEALTH AND PROMOTE NEW INVESTMENT ON TRIBAL LANDS:
  - Redirect Federal income taxes generated on tribal lands to tribal governments
  - Prohibit states from taxing economic activity on tribal lands
  - Establish Tribal Empowerment Zones to provide 100% tax benefits for job creation on tribal lands
  - Allow Indian nations and Alaska Native Corporations to do business anywhere in Indian Country with no federal or state taxation
  - Provide 100% tax credits for non-Indian investments on tribal lands
  - Make permanent and expand existing wage credits and depreciation allowance
- End the harassment of tribal governments and Indian people
  - Adopt the General Welfare Exclusion
  - Stop random audits of tribal governments
  - Recognize exclusive tribal government taxing authority over tribal lands

# Why Indian Country Must Organize!

- Join the Tribal Leaders Coalition to Protect Tribal Tax Immunities
- Support national and regional Indian advocacy organizations
  - National Congress of American Indians
  - National Indian Gaming Association
  - United South and Eastern Tribes
  - California Association of Tribal Governments
  - Midwest Association of Sovereign Tribes
  - Native American Finance Officers Association
- For more information, contact ROP at (202) 408-6348 or [robert.porter@snrdenton.com](mailto:robert.porter@snrdenton.com)

## Robert Odawi Porter

- Robert Odawi Porter is an expert in the field of American Indian law and has dedicated his 20 year legal career to protecting and expanding the rights of indigenous nations and peoples. He joined SNR Denton on January 1, 2013 following the completion of his term as the 67th President of the Seneca Nation of Indians. Robert previously served the Seneca Nation for nine years as its chief legal counsel in the positions of Attorney General and later as Senior Policy Advisor and Counsel. In those roles, he developed innovative legal and political strategies to protect and expand Seneca sovereignty, treaty rights, and national wealth.
- Before serving as Seneca Nation President and chief counsel, for over 10 years Robert was a tenured law professor at the University of Kansas, the University of Iowa, and Syracuse University. He is the author of numerous scholarly publications focusing on indigenous law and governance, tribal sovereignty, and the cultural, political, and legal impacts of Euro-American colonization on indigenous peoples. He has also served as a consulting expert to other Indian nations and tribes, individually owned Indian businesses, and Fortune 500 companies.
- Robert is a graduate of Syracuse University and Harvard Law School. He is a member of the Heron Clan of the Seneca Nation and was raised on the Nation's Allegany Territory.